

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
UNITED STATES OF AMERICA

v.

FRANK MAXWELL,

Defendant.
-----X**ORDER**

19 CR 211-2 (VB)

Defendant Frank Maxwell has submitted a letter to the Court dated January 9, 2021, which was received by the Court on January 15, 2021. The letter, liberally construed, seeks a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) in light of the COVID-19 pandemic. The letter will be separately docketed.

Section 3582(c)(1)(A)(i) authorizes the Court to reduce a term of imprisonment previously imposed for “extraordinary and compelling reasons.” However, the statute contains an explicit exhaustion requirement that must be complied with prior to the filing of such a motion: “[T]he court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier, may reduce the term of imprisonment . . . if it finds that . . . extraordinary and compelling reasons warrant such a reduction.”

Defendant does not claim to have exhausted or even attempted to exhaust his administrative rights. The Court does not have the power to waive the exhaustion requirement. See, e.g., United States v. Ogarro, 2020 WL 1876300, at *3–5 (S.D.N.Y. Apr. 14, 2020); United States v. Roberts, 2020 WL 1700032, at *2 (S.D.N.Y. Apr. 8, 2020).

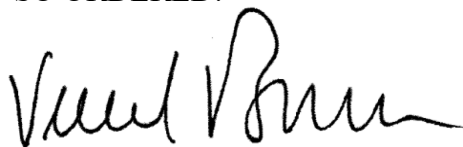
Accordingly, the application is DENIED WITHOUT PREJUDICE to refiling after defendant demonstrates that the exhaustion requirement has been satisfied.

Chambers will mail a copy of this Order to defendant at the following address:

Frank Maxwell, Reg. No. 86394-054
Federal Correctional Institution Ray Brook
P.O. Box 900
Ray Brook, NY 12977

Dated: January 15, 2021
White Plains, NY

SO ORDERED:



Vincent L. Briccetti, U.S.D.J.